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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Letters Patent Appeals Nos.160 to 165 of 1998
with
Civil Application No.7278/98

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

PADAM BAHADUR THAPA

Versus

UNION OF INDIA

Appearance:
MR PB SHARMA for Appellant
MR RC JANI for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

Date of decision: 09/10/98

C.A.V. Judgment: (Per: Kadri, J.)

1. In this group of appeals, which are filed under

clause 15 of the Letters Patent, six appellants challenge the common judgment and order dated 23.12.1997 passed by the learned single Judge in Special Civil Applications Nos. 988/82 to 991/82 and 8533/82 and 113/82, confirming the order dated 21.4.1981 passed by the Lt. General, Commander in Chief, Southern Command, whereby the six appellants were dismissed from service on the ground that they were present during the inflammatory speech by Ex.SUB BB Rana and their failure to report the matter showed that they were privy to the mutiny.

2. As the common questions of law and facts arise in these appeals, they are disposed of by this common judgment.

3. The appellants belonged to the lower rank of Army of Gorkha Regiment, 4th Battalion which was stationed at Ladakh, some 100 kms. north of Leh. One officiating Subedar Major Bhim Bahadur Rana and other army personnel were ordered to march to Baldy Top, a hill top nearby, by Lt.Col. D.P. Bhatia, the Commanding Officer. Feeling enraged, Subedar Major B.B. Rana protested against the order and after returning addressed an inflammatory speech to the Army personnel. He instigated all Army personnel to express their unwillingness to attend the cadre party and many of them including the appellants submitted to this inflammatory speech and raised their hands in his support. This reaction to Rana's protest resulted into a mutiny at around 22.00 hrs. on the same day. The army personnel went on rampage and damaged the officers' Mess Building and the furniture and beaten two of the superior officers. On the date of the incident, after ordering the march to the Baldy Top, the Commanding Officer, Lt.Col. O.P. Bhatia had left the station to attend some business at Leh and all throughout the date, he was not present at the head-quarters.

4. A Court of Inquiry was ordered to investigate into the circumstances in which the army personnel of 4/3 GR were involved in collective insubordination, assault, affray, disorder and used criminal force against Major Yogendra Singh, Capt. S.K.Behl and Capt. Gupta of 4/3 CR at about 22.00 hrs on 8th October 1979 in the unit lines. In the Court of Inquiry, Brig. K.N. Thandani was the Presiding Officer, while Lt Col S.C. Mathur and Lt Col HA Patil were the Members. In the Court of Inquiry, Maj B R Gurung was appointed as interpreter. In the said inquiry, 89 army personnel came to be examined. It is pertinent to note that all the Army personnel who had taken part in the mutiny were present during the court of inquiry, but did not cross examine the witnesses

even though sufficient opportunity was given to them.

5. The Court of Inquiry after recording evidence of the army personnel of 4/3 GR, opined that Subedar Major B.B. Rana was responsible for causing the mutiny by instigating the men to rise against authority. He exploited the collective punishment ordered by the Commandant and was to be blamed for instigating the cadre NCOs to collectively give their unwillingness for attending the cadres. He gave an inflammatory speech to all the JCOs and army personnel at the Battalion fallin, with a naked khukri in his hand and appealing to their innermost sentiments and seeking their support in collective insubordination. He also threatened the JCOs again with a naked khukri in his hand and ordered that only his orders would be obeyed and that he would seek vengeance against the officers particularly the Lt. Col. O.P. Bhatia. He gave another inflammatory speech outside the JCO Club and removed his badges of Rank. Subedar Major Rana led a large group of army personnel to the officers' mess area in search of the officers and directed the destruction of the property of the officers and the officers' mess. Rana also instigated to launch an assault on the officers.

6. The Court of Inquiry also opined that the JCOs of the Battalion were fully in the picture of the behaviour pattern of B.B. Rana in the battalion. All the army personnel who were present during the inflammatory speech of Rana raised their hands in support and did not protect their officers and did not take any action to control the collective insubordination. The appellants and other army personnel participated actively on the mutiny and were seen at various places on 8/9-10-1979 by the witnesses examined at the inquiry. The Court of Inquiry also opined that cognizance should be taken of the offences committed by the individuals mentioned in Appendix "F" to the inquiry report.

7. After the opinion of the Court of Inquiry, show cause notices came to be served by Lt. Col. Shri A.R. Koratkar to the appellants and other army personnel who participated in mutiny on 8/9-10-1979. In response to the show cause notices, the appellants and other army personnel gave their replies which were considered by the authority. Thereafter, by the impugned orders dated 21.4.1981 the appellants and other army personnel were dismissed from service under the provisions of Section 20(3) of the Army Act, 1950 ("Act" for short). The said dismissal orders came to be challenged before the learned single Judge in Special Civil Applications as mentioned

of the appellants, following two contentions came to be raised:

(a) The procedure set out in the Army Act, 1950 and the Army Rules, 1954 which is mandatory in nature has not been followed and there was no justification for dispensing with the inquiry as provided under Rule 17 of the Army Rules.

(b) The action taken by the respondents is arbitrary inasmuch as some of the officers were subjected to court martial of whom two were acquitted and some were dealt with departmentally while many have been dismissed from service quite a few have been discharged from service.

Decisions of various High Courts and the Apex Court were also relied upon by the learned counsel for the appellant. However, the learned single Judge, by common judgment and order dated 23.12.1997, rejected all Special Civil Applications filed by the appellants.

8. During the course of the hearing, the learned Additional Standing Counsel to the Central Government, Mr. R.C.Jani, who appears for the respondents, has produced the records of the Court of Inquiry before us.

9. The learned counsel for the appellants, Mr.P.B. Sharma, has submitted that Rule 180 of the Army Rules, 1954, is mandatory in nature, and, when the appellants were absent at the Court of Inquiry, all the subsequent proceedings would be void ab-initio. The learned counsel for the appellants, in support of the above contention, relied upon the decision of the Madhya Pradesh High Court in the case of R.P.Shukla and others vs. General Officer Commanding-in-Chief, Lucknow and others, reported in AIR 1996 Madhya Pradesh 233. In the above decision, in paragraph 14, the High Court observed that, "the position that merges is this there is nothing on record to show that when the Court of Enquiry was held by Major Jodha, the accused persons were present". The High Court further observed that, "as per the principles laid down by the Supreme Court in the case of Col. Prithi Pal Singh Bedi vs. Union of India, reported in AIR 1982 SC 1413, whenever a Court of Enquiry is held it is obligatory to follow the procedure prescribed for the Court of Enquiry". In the facts of that case, the High Court held that, "when mandatory

provision of Rule 180 which prescribes for Court of Inquiry, was not followed, the report of Court of Inquiry was vitiated". In the present case, the record of Court of Inquiry reveals that, at the end of recording of the statement of each witness, the army personnel, against whom the inquiry was conducted, were specifically asked whether they wanted to cross examine the witnesses and they did not avail of the opportunity to cross examine the witnesses. This shows that the appellants and other army personnel were present when the Court of Inquiry proceedings were conducted. In the affidavit in reply, which was filed in the Special Civil Applications, it was categorically stated that the appellants had participated in the Court of Inquiry proceedings and they were provided with the assistance of interpreter and the appellants had never raised any grievance about non-supply of report of the court of inquiry. Therefore, in view of the facts of this case, the decision relied upon by the learned counsel for the appellant in R.P. Shukla's case (supra) will not apply to the facts of the present case.

10. The learned counsel for the appellant has next relied upon the decision of the Karnataka High Court in the case of M.S. Oberoi (Retd.) vs. Union of India, reported in 1995 Lab.I.C. 753. The facts before the Karnataka High Court were that the petitioner, who was very senior officer of the armed forces, was compulsorily made to retire from service by order dated 23.4.1991. The allegations against the petitioner were that he had affair with wife of a brother officer. The High Court, in the above background, held that the fact that concerned senior officer and their wives are involved and the situation was embarrassing is no ground to dispense with the enquiry which could have been done in camera. The High Court held that, "there was breach of rules of natural justice and the charges of misconduct were not proved and, therefore, the order of compulsory retirement of the petitioner was not warranted. It is further held by the High Court that, "the decision even if taken by the highest authority of the armed forces is subject to judicial review". In our view, the decision of the Karnataka High Court in the case of M.S. Oberoi (supra), would not be applicable to the facts of the present case. In the present case, the appellants had taken active part in the mutiny and in the court of enquiry they were present and were afforded an opportunity to cross examine the witnesses. After the report of the court of enquiry, show cause notices were also served upon the appellants. There was no

dispensation of the court of enquiry and the appellants were afforded adequate opportunity to defend themselves which they did not avail of. Therefore, in our view, the facts of the present case are quite distinguishable from the facts in the case of M.S. Oberoi (supra).

11. The learned counsel for the appellants also relied upon the decision of the Full Bench of the Delhi High Court in the case of Ex.Major N.R. Ajwani vs. Union of India, reported in 1994 LAB.I.C. 2122. The Delhi High Court in the above case held that, "order of termination of service of defence personnel is subject to judicial review to ascertain whether the same is exercised lawfully and not vitiated for mala fides or based on extraneous grounds and that the order can be challenged on the ground that it is a camouflage". It is true that the orders made against the defence personnel under the Army Act, 1950 and the Army Rules, 1954, are subject to judicial review. The record of court of enquiry and the evidence collected during enquiry proves beyond doubt that the appellants were members of mutiny and they had actively taken part and caused damage to the army property and caused injuries to the superior officers. The evidence collected during the enquiry was sufficient, in our opinion, to hold that the appellants were involved in serious misconduct of mutiny and the appellants were rightly dismissed from the service of defence. Therefore, in our view, the judgment of the Delhi High Court in the case of Ex.Major N.R. Ajwani (supra) will be of no help to the appellants.

12. The learned counsel for the appellants has further argued that when some army personnel were tried by Court-martial and the appellants were not placed before the Court-martial, there was violation of Articles 14 and 16 of the Constitution of India. It is further submitted that the authorities had failed to give any explanation and had not recorded satisfaction as to why proceedings before the Court-martial be dispensed with and the appellants were dismissed on the basis of the report of the Court of Inquiry departmentally. In our view, this submission of the learned counsel for the appellant does not deserve merit. When the appellants were found to have been joined the mutiny and had attacked their officers an.R

mess and when the evidence before the Court of Inquiry revealed their active participation in the mutiny, it was not necessary to refer that case to the Court-martial.

13. The learned counsel for the appellants has placed reliance on the following decisions to substantiate the contention that Rules 22 and 23 of the Army Rules, 1954, are mandatory in nature and non-compliance thereof will render the whole proceedings invalid.

(i) 1993 (1) Crimes 372 : Lance Dafedar Laxman Singh vs. Union of India and others.
(ii) 1992 CRI. L.J. 1712 : Balwant Singh vs. Union of India and another
(iii) 1989 CRI.L.J. 1986 : Nb/Sub Avtar Singh vs. Union of India and others.

The principle laid down in the above decisions is that the provisions of Rules 22 and 23 are mandatory in nature. However, We do not find any merit in the contention of the learned counsel for the appellants that the procedure as contemplated in the above Rules were not followed during the court of enquiry. The question which arises for consideration for this Court is: whether the orders of dismissal are made against the appellants after holding the inquiry or not, and, if the inquiry is held, the same is in accordance with law ? A large number of army personnel were involved in the mutiny and punishment to be imposed upon each of them would depend upon the extent of their involvement in the mutiny. After the Court of inquiry recorded its findings, each of the persons, who were, prima facie, found to be involved in the mutiny, was served with a chargesheet. The hearing of charge under Rule 22 was conducted and at the same time the summary of evidence was also recorded. All the appellants were present at the recording of summary of evidence and all the witnesses were offered for cross examination. The appellants, however, chose not to cross examine the said witnesses. It is, thus, evident that the hearing of charge was conducted in presence of the appellants and they were made present at the time of recording of the summary of evidence also. In our view, the punishment had been imposed upon the appellants after following the procedure laid down in Rules 22 and 23 of the Rules. In that view of the matter, above decisions on which the learned counsel for the appellants placed reliance will not apply in the facts and circumstances as stated above.

14. The learned counsel for the appellants contended that there is discrimination between the appellants and other army personnel, who were sent for Court Martial on

the same charge of mutiny. The evidence recorded during the Court of Inquiry proceedings reveals that the appellants had actively participated in the mutiny and had caused damage to the officers' club and had assaulted the superior officers. The appellants are not similarly situated as against the army personnel who were sent for Court Martial. The submission of the learned counsel for the appellants that, since two of the army personnel were acquitted in the Court Martial proceedings, had the appellants been sent for Court Martial, there was a chance that they would have been acquitted, deserves to be rejected. The case of each army personnel is to be decided looking to the individual participation in the mutiny. The appellants had taken active part in the mutiny which is a serious misconduct and cannot be viewed lightly looking to the discipline to be maintained in the military services. Therefore, we do not find any substance in the argument of the learned counsel that there is discrimination between the appellants and other army personnel, who were sent for Court Martial on the same charge of mutiny. When the participation of the appellants was fully established by the statements of witnesses before the Court of Inquiry, the authorities concerned were not bound to refer the case to the Court Martial. Merely because some army personnel were referred to the Court Martial, and the cases of the appellants were not referred to, it does not amount to discrimination or violation of Articles 14 and 16 of the Constitution of India. Rule 23 of the Rules provide for taking out summary of evidence. During the Court of Inquiry, the procedure for taking down summary of evidence is scrupulously followed. Sub-rule (2) of Rule 23 provides that the accused may put in cross-examination such questions as he thinks fit to any witness and the questions together with the answers thereto shall be added to the evidence accordingly. After the statements of witnesses were recorded in presence of the appellant, they were categorically asked whether they wanted to put any question in the cross examination which opportunity they have not availed. While imposing punishment on the appellants, respondent No.2 was satisfied with the opinion of the Court of Inquiry and the replies to the show cause notices of the appellants, and, after recording his satisfaction, he had passed the orders of dismissal. We do not find any infirmity or illegality in conducting the Court of Inquiry or summary of evidence prepared during that inquiry. The principles of natural justice were followed before the orders of dismissal were passed against the appellants. Disobedience of the orders of the superiors cannot be tolerated for a minute in the Army when there was sufficient evidence against

the appellants which revealed that there was serious misconduct of taking part in the mutiny. Section 37 of the Act is incorporated in Chapter VI of the Act which deals with the offences. Clauses (b), (c) and (d) of Section 37 deal with mutiny. The evidence collected during the course of Court of Inquiry reveals that the appellants had joined the mutiny and were present during the mutiny and did not endeavour to suppress the said mutiny and had not informed their superiors about the mutiny. Therefore, in our opinion, the appellants had committed serious offence as per Section 37 of the Act. When the appellants were involved in such serious offence, it cannot be said that the orders of dismissal are unwarranted. The concerned authorities have followed the procedure under the Rules and Act, and, after giving sufficient opportunity to the appellants to cross examine and to submit their reply to the show cause notice, have passed the impugned orders of dismissal.

15. The submission of the learned counsel for the appellants that no documents were supplied to the appellants during the inquiry and there was no hearing of the charge, is devoid of merit. The affidavit in reply, which was filed in the Special Civil Applications, shows that necessary documents were supplied to the appellants and there was hearing of the charge before holding the Court of Inquiry. Therefore, we do not find any substance in the contention of the learned counsel for the appellants that the principles of natural justice were not followed in the Court of Inquiry proceedings. These are the only submissions advanced by the learned counsel for the appellants before us. We do not find any substance in any of the submissions of the learned counsel for the appellants.

16. The learned Additional Central Government Standing Counsel has placed reliance on the judgment of the Supreme Court in the case of Union of India & Another vs. J.S. Brar, reported in AIR 1993 Supreme Court 773. The facts before the Supreme Court were that one G.S. Brar, who was a Major in the Indian Army, was sentenced by the Court Martial, which came to be confirmed by the Chief of the Army Staff; he had approached the Allahabad High Court by way of Civil Misc Writ Petition No.9319 of 1998; the High Court allowed the petition and set aside the sentence holding that sufficient opportunity was not given to the respondent-accused to cross-examine witnesses summoned after the order of revision or to let in fresh evidence to rebut their evidence. The Union of India carried the matter in appeal before the Supreme Court. The Supreme Court observed that the witnesses unmistakably support the prosecution case; they speak to the presence of the accused at the time and place of the

offence and his active participation in the commission of the crime as well as the attempt made by him to suppress evidence; in the proceedings, reasonable opportunity was afforded to defence to cross examine the witnesses; and that there was no failure of natural justice in any respect. The Supreme Court held that, "the High Court was not justified in interfering with the finding and sentence granted by the GCM and confirmed by the Chief of Army Staff". Relying on the above observation, the learned counsel for the respondents submitted that the orders of punishment imposed upon the appellants have been made after following due procedure and they do not warrant any interference by this Court, more particularly when the learned single Judge has confirmed the said orders and this Court sitting in appeal under clause 15 of the Letters Patent would not interfere with the finding of facts and appreciation of evidence. We have carefully gone through the record produced by the learned counsel appearing for the respondents and we do not find any infirmity or illegality in the procedure followed by the authorities while recording summary of evidence against the appellants. The appellants were afforded adequate opportunity to defend their case, and there was no breach of principles of natural justice or breach of the mandatory provisions. We do not find any illegality or infirmity in the order of the learned single Judge, who declined to interfere with the orders of dismissal passed against the appellants. The judgment relied upon by the learned counsel appearing for the respondents in the case of J.S. Brar (supra) will apply in all fours to the facts of the present case.

17. In the aforesaid facts and circumstances of the case, we do not find any reason to interfere with the common judgment and order of the learned single Judge.

18. As a result of foregoing discussion, all these appeals are dismissed. There shall be no order as to costs. Consequently, there shall be no order on Civil Application.

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